

Senate Amendment 3174

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1 1 Amend House File 619, as amended, passed, and
1 2 reprinted by the House, as follows:
1 3 #1. Page 1, by inserting before line 1 the
1 4 following:
1 5 <DIVISION I>
1 6 #2. Page 11, by inserting after line 2 the
1 7 following:
1 8 <DIVISION II
1 9 Sec. _____. Section 13B.4, Code 2005, is amended by
1 10 adding the following new subsection:
1 11 NEW SUBSECTION. 6A. The state public defender
1 12 shall perform all of the following duties with respect
1 13 to the appointment of counsel for indigent persons in
1 14 cases in which a sentence of death may be or is to be
1 15 imposed:
1 16 a. Provide or contract with attorneys for
1 17 appointment as lead counsel and cocounsel to provide
1 18 legal services in cases where a person is charged with
1 19 murder in the first degree and the state has given
1 20 notice of intent to seek the death penalty or in cases
1 21 in which a sentence of death is to be imposed.
1 22 b. Conduct or sponsor specialized training
1 23 programs for attorneys representing persons who may be
1 24 executed.
1 25 Sec. _____. Section 216A.133, Code 2005, is amended
1 26 by adding the following new subsection:
1 27 NEW SUBSECTION. 8. Review the effects of the
1 28 reinstatement of the death penalty on arrest,
1 29 prosecution, conviction, and incarceration rates; law
1 30 enforcement duties and ability to obtain evidence
1 31 necessary for arrests; court dockets and workload;
1 32 prison space; recidivism rates of persons charged with
1 33 crimes of violence against persons; and other aspects
1 34 of the criminal justice system. Based on the review
1 35 and other factors deemed relevant, the council shall
1 36 make findings and develop recommendations resulting
1 37 from those findings. Commencing January 1, 2007, the
1 38 council shall report its findings and any related
1 39 recommendations annually to the governor and to the
1 40 general assembly.
1 41 Sec. _____. NEW SECTION. 602.10111A QUALIFICATIONS
1 42 OF COUNSEL IN DEATH PENALTY CASES.
1 43 The supreme court shall prescribe rules which
1 44 establish minimum standards and procedures by which
1 45 attorneys may become qualified to provide legal
1 46 services as lead counsel in cases in which a sentence
1 47 of death may be or is to be imposed.
1 48 Sec. _____. NEW SECTION. 812A.1 PROCEDURE TO
1 49 DETERMINE SANITY OF CONDEMNED INMATE.
1 50 1. At any time prior to execution of an inmate
2 1 under section 902.1, if the director of the department
2 2 of corrections or the counsel for a person who is
2 3 under a sentence of execution has cause to believe
2 4 that the inmate is suffering from such a diseased or
2 5 deranged condition of the mind as to prevent the
2 6 defendant from knowing the nature and quality of the
2 7 act the defendant has been convicted of, or from
2 8 understanding that trial on the offense has taken
2 9 place and that execution proceedings are about to take
2 10 place, or to otherwise cause the defendant to lack the
2 11 capacity to understand the sentence which has been
2 12 imposed and to participate in any legal proceedings
2 13 relating to the sentence, the director or counsel may
2 14 file a request with the court that issued the warrant
2 15 for execution for a determination of the inmate's
2 16 sanity. If the district court determines that there
2 17 is not sufficient reason to believe that the inmate is
2 18 insane, the court shall enter an order denying the
2 19 request and shall state the grounds for denying the
2 20 request. If the court believes that there is
2 21 sufficient reason to believe that the inmate is
2 22 insane, the court shall suspend the execution and
2 23 conduct a hearing to determine the sanity of the
2 24 inmate.

2 25 2. At the hearing, the court shall determine the
2 26 issue of the inmate's sanity. Prior to the hearing,
2 27 the court shall appoint two licensed physicians or
2 28 licensed psychologists, or one licensed physician and
2 29 one licensed psychologist, who are qualified by
2 30 training and practice, for purposes of conducting a
2 31 psychiatric or psychological examination of the
2 32 inmate. The physicians or psychologists shall examine
2 33 the inmate and report any findings in writing to the
2 34 court within ten days after the order of examination
2 35 is issued. The inmate shall have the right to present
2 36 evidence and cross-examine any witnesses at the
2 37 hearing. Any statement made by the inmate during the
2 38 course of any examination provided for in this
2 39 section, whether or not the inmate consents to the
2 40 examination, shall not be admitted into evidence
2 41 against the inmate in any criminal proceeding for
2 42 purposes other than a determination of the inmate's
2 43 sanity.

2 44 3. If, at the conclusion of a hearing held
2 45 pursuant to this section, the court determines that
2 46 the inmate is sane, the court shall enter an order
2 47 setting a date for the inmate's execution, which shall
2 48 be carried into effect in the same manner as provided
2 49 in the original sentence. A copy of the order shall
2 50 be sent to the director of the department of

3 1 corrections and the governor.

3 2 4. If, at the conclusion of a hearing held
3 3 pursuant to this section, the court determines that
3 4 the inmate is insane, the court shall suspend the
3 5 execution until further order. At any time after
3 6 issuance of the order, if the court has sufficient
3 7 reason to believe that the inmate has become sane, the
3 8 court shall again determine the sanity of the inmate
3 9 as provided by this section. Proceedings pursuant to
3 10 this section may continue to be held at such times as
3 11 the court orders until it is either determined that
3 12 the inmate is sane or incurably insane.

3 13 Sec. _____. NEW SECTION. 814.28 REVIEW OF DEATH
3 14 SENTENCE.

3 15 1. In a case in which a sentence of death is
3 16 imposed, the supreme court shall automatically review
3 17 the judgment and sentence. The court's review of the
3 18 case shall be de novo. The case shall not be
3 19 transferred to the court of appeals.

3 20 2. A review by the supreme court of a judgment and
3 21 sentence imposing the punishment of death has priority
3 22 over all other criminal and other actions pending
3 23 before the supreme court.

3 24 3. The supreme court shall review the trial and
3 25 judgment, and shall separately review the sentencing
3 26 proceeding. Upon determining that errors did not
3 27 occur at the trial requiring reversal or modification
3 28 of the judgment, the supreme court shall proceed to
3 29 determine if the sentence of death is lawfully
3 30 imposed. In its review of the sentencing proceeding
3 31 the supreme court shall determine all of the
3 32 following:

3 33 a. Whether the sentence of death was imposed
3 34 capriciously or under the influence of prejudice or
3 35 other arbitrary factor.

3 36 b. Whether the special verdicts returned under
3 37 section 901.11 are supported by the evidence.

3 38 c. Whether the sentence of death is excessive or
3 39 disproportionate to the penalty imposed in similar
3 40 cases, considering both the crime and the defendant.

3 41 4. If the supreme court determines that the
3 42 sentence of death was not lawfully imposed, the court
3 43 shall set aside the sentence and shall remand the case
3 44 to the trial court for a second sentencing proceeding
3 45 to determine if the imposition of death is warranted.

3 46 5. If the supreme court affirms the judgment and
3 47 sentence of death, the clerk of the supreme court
3 48 shall certify the judgment of the supreme court under
3 49 the seal of the court to the clerk of the trial court.

3 50 Sec. _____. Section 815.10, Code 2005, is amended by
4 1 adding the following new subsection:

4 2 NEW SUBSECTION. 1A. If two attorneys have not
4 3 already been appointed pursuant to section 13B.4 or
4 4 13B.9, the court shall appoint, for each indigent
4 5 person who is charged with murder in the first degree

4 6 and in which a notice of intent to seek the death
4 7 penalty has been filed, two attorneys who are
4 8 qualified under section 602.10111A to represent the
4 9 person in the murder proceedings and in all state
4 10 legal proceedings which take place from the time the
4 11 person is indicted or arraigned until the person is
4 12 sentenced on the charge. In addition, if at any point
4 13 in federal postconviction proceedings an indigent
4 14 person is not afforded court-appointed counsel, the
4 15 state shall provide counsel to the person to present
4 16 any claims determined meritorious by the federal court
4 17 if the person is not otherwise represented by legal
4 18 counsel. Only private attorneys and public defenders
4 19 who are qualified to provide representation in cases
4 20 in which the death penalty may be imposed are eligible
4 21 for appointment or assignment to a case in which the
4 22 death penalty may be imposed.

4 23 Sec. _____. NEW SECTION. 901.11 MURDER PROCEEDINGS
4 24 == REQUEST FOR DEATH PENALTY == PENALTY PROCEEDINGS.

4 25 1. If a notice of intent to seek the death penalty
4 26 has been filed, objections to the imposition of the
4 27 death penalty based upon allegations that a defendant
4 28 was mentally retarded or mentally ill at the time of
4 29 the commission of the offense shall be raised within
4 30 the time provided for the filing of pretrial motions
4 31 under rule of criminal procedure 2.11, Iowa court
4 32 rules. The court may, for good cause shown, allow
4 33 late filing of the motion. Hearing on the motion
4 34 shall be held prior to trial and the burden of proof
4 35 shall be on the defendant to prove mental retardation
4 36 or mental illness by a preponderance of the evidence.
4 37 However, a rebuttable presumption of mental
4 38 retardation arises if a defendant has an intelligence
4 39 quotient of seventy or below. If the court finds that
4 40 the defendant is mentally retarded, the defendant, if
4 41 convicted of murder in the first degree, shall not be
4 42 sentenced to death but shall be sentenced to life
4 43 imprisonment in the manner provided in section 902.1,
4 44 subsection 1. A finding by the court that the
4 45 evidence presented by the defendant at the hearing
4 46 does not preclude the imposition of the death penalty
4 47 under this section and section 902.15 shall not
4 48 preclude the introduction of evidence of mental
4 49 retardation or mental illness during the penalty
4 50 proceeding. If the court finds that evidence of
5 1 mental retardation or mental illness does not preclude
5 2 imposition of the death penalty, evidence of mental
5 3 retardation or mental illness may be reviewed by the
5 4 jury in the penalty proceeding and the jury shall not
5 5 be informed of the finding in the initial proceeding
5 6 at any time during the penalty proceeding.

5 7 2. If at the trial on a charge of murder in the
5 8 first degree, the state intends to request that the
5 9 death penalty be imposed under section 902.1,
5 10 subsection 2, the prosecutor shall file a notice of
5 11 intent to seek the death penalty, listing the factors
5 12 enumerated under section 902.15 that the state intends
5 13 to establish in support of imposition of the death
5 14 penalty, at the time of and as part of the information
5 15 or indictment filed in the case.

5 16 3. If a notice of intent to seek the death penalty
5 17 has been filed, the trial shall be conducted in
5 18 bifurcated proceedings before the same trier of fact.
5 19 During the initial proceeding, the jury, or the court,
5 20 if the defendant waives the right to a jury trial,
5 21 shall decide only whether the defendant is guilty or
5 22 not guilty of murder in the first degree.

5 23 a. If, in the initial proceeding, the court or
5 24 jury finds the defendant guilty of, or the defendant
5 25 pleads guilty to, an offense other than murder in the
5 26 first degree, the court shall sentence the defendant
5 27 in accordance with the sentencing procedures set forth
5 28 in rule of criminal procedure 2.23, Iowa court rules,
5 29 and chapters 901 through 909, which are applicable to
5 30 the offense.

5 31 b. If the court or jury finds the defendant guilty
5 32 of, or the defendant pleads guilty to, murder in the
5 33 first degree, but the prosecuting attorney waives the
5 34 death penalty, the court shall sentence the defendant
5 35 to life imprisonment in accordance with the sentencing
5 36 procedures set forth in rule of criminal procedure

5 37 2.23, Iowa court rules, and chapters 901 through 909,
5 38 which are applicable to convictions of murder in the
5 39 first degree.

5 40 c. If the court or jury finds the defendant guilty
5 41 of murder in the first degree, or a defendant enters a
5 42 plea of guilty in the initial proceeding, and the
5 43 prosecuting attorney does not waive imposition of the
5 44 death penalty, a penalty proceeding shall be held in
5 45 the manner provided in subsections 4 through 12.

5 46 4. No sooner than twenty-four hours after a
5 47 verdict of guilty or a plea of guilty to the charge of
5 48 murder in the first degree is returned in the initial
5 49 proceeding, a penalty proceeding shall be held to
5 50 determine whether the defendant shall be sentenced to
6 1 death or to life imprisonment. The proceeding shall
6 2 be conducted in the trial court before the trial jury,
6 3 or the court if the defendant has waived the right to
6 4 a jury trial or has waived the right for the
6 5 proceeding to be before the trial jury. Both the
6 6 state and the defendant shall have the right to
6 7 present opening statements at the commencement of the
6 8 penalty proceedings. In the proceeding, evidence
6 9 relevant to the existence of any aggravating or
6 10 mitigating circumstances may be presented as follows:

6 11 a. The state or the defendant may present evidence
6 12 relevant to any of the factors enumerated in section
6 13 902.15 and any aggravating circumstances other than
6 14 juvenile delinquency adjudications for offenses which
6 15 carry penalties equivalent to the penalties imposed
6 16 for simple or serious misdemeanors. The state may
6 17 introduce evidence of the actual harm caused by the
6 18 commission of the murder including, but not limited
6 19 to, evidence relating to the life of the victim and
6 20 the impact of the loss of the victim to the victim's
6 21 family and society. The state shall be required to
6 22 prove the existence of one or more of the factors
6 23 enumerated in section 902.15 beyond a reasonable
6 24 doubt.

6 25 b. The defendant may present evidence that the
6 26 defendant was mentally retarded at the time of the
6 27 commission of the offense. The burden of proof shall
6 28 be on the defendant to prove mental retardation by a
6 29 preponderance of the evidence. However, a rebuttable
6 30 presumption of mental retardation arises if a
6 31 defendant has an intelligence quotient of seventy or
6 32 below.

6 33 c. The state or the defendant may present evidence
6 34 relevant to any mitigating circumstances which may
6 35 exist. Mitigating circumstances may include the
6 36 following circumstances:

6 37 (1) The defendant was under the influence of an
6 38 extreme mental or emotional disturbance insufficient
6 39 to constitute a defense.

6 40 (2) The age of the defendant at the time of the
6 41 murder.

6 42 (3) The defendant's capacity to appreciate the
6 43 wrongfulness of the defendant's conduct and to conform
6 44 that conduct to the requirements of law was
6 45 significantly impaired as a result of a mental disease
6 46 or defect or mental retardation, but not to a degree
6 47 sufficient to constitute a defense.

6 48 (4) The defendant has no significant history of
6 49 prior adult criminal activity.

6 50 (5) The defendant acted under extreme duress or
7 1 under the substantial domination of another person.

7 2 (6) The defendant did not directly commit the
7 3 murder and the defendant did not intend to kill or
7 4 anticipate that lethal force would be used.

7 5 (7) Any other factor which is relevant to the
7 6 defendant's character or record or to the
7 7 circumstances of the offense.

7 8 d. The state and the defendant or the defendant's
7 9 counsel shall be permitted to present and cross=
7 10 examine witnesses and present arguments for or against
7 11 a sentence of death. The admission of evidence in
7 12 support of the existence of a factor enumerated in
7 13 section 902.15 shall be governed by the rules
7 14 governing admissibility of evidence at a criminal
7 15 trial. Evidence regarding aggravating and mitigating
7 16 circumstances shall not be governed by the rules
7 17 governing admissibility of evidence, except that

7 18 introduction of evidence secured in violation of the
7 19 Constitution of the United States or of the
7 20 Constitution of the State of Iowa shall not be
7 21 permitted.

7 22 5. At the conclusion of presentation of evidence
7 23 in the penalty proceeding, the state and the defendant
7 24 or the defendant's counsel shall be permitted to make
7 25 closing arguments, including any rebuttal arguments,
7 26 in the same manner as in the initial proceeding and
7 27 the following issues shall be determined by the jury
7 28 or the court, if there is no jury:

7 29 a. Whether one or more of the factors enumerated
7 30 in section 902.15 have been established beyond a
7 31 reasonable doubt.

7 32 b. If one or more aggravating circumstances are
7 33 established, whether the aggravating circumstance or
7 34 circumstances outweigh any one or more mitigating
7 35 circumstances.

7 36 c. Whether the defendant shall be sentenced to
7 37 death.

7 38 6. A recommendation for a sentence of death shall
7 39 not be permitted if the recommendation is based on the
7 40 race, color, religious beliefs, national origin, or
7 41 sex of the defendant or any victim. After submission
7 42 of the issues, but prior to the return of a finding in
7 43 the penalty proceeding, if the matter is tried before
7 44 a jury, the court shall instruct the jury that in
7 45 considering whether a sentence of death is justified,
7 46 it shall not consider race, color, religious beliefs,
7 47 national origin, or sex of the defendant or of any
7 48 victim. The court shall further instruct the jury
7 49 that it shall not return a sentence of death unless it
7 50 concludes that such a sentence would be recommended no
8 1 matter what the race, color, religious beliefs,
8 2 national origin, or sex of the defendant or any victim
8 3 may be.

8 4 7. After submission of the issues, but prior to
8 5 the commencement of the jury deliberations in the
8 6 penalty proceeding, the court shall instruct the jury
8 7 that if the defendant is not sentenced to death, the
8 8 court is required by law to impose a sentence of
8 9 imprisonment until death without parole. The court
8 10 shall further instruct the jury that the sentence of
8 11 imprisonment until death without parole is required by
8 12 law if the jury fails to reach a unanimous verdict
8 13 recommending a sentence of death.

8 14 8. Concurrently with the return of the findings on
8 15 the issues submitted under subsection 5, the jury, or
8 16 the court if there is no jury, shall return special
8 17 verdicts as follows:

8 18 a. Which factors, as enumerated in section 902.15,
8 19 have been unanimously found to have been established
8 20 beyond a reasonable doubt.

8 21 b. Which aggravating circumstances were
8 22 established and were considered in reaching the
8 23 verdict returned on the issue specified in subsection
8 24 5, paragraph "b".

8 25 c. Which mitigating circumstances were established
8 26 and were considered in reaching the verdict returned
8 27 on the issue specified in subsection 5, paragraph "b".

8 28 9. If the jury, or the court if there is no jury,
8 29 returns a unanimous affirmative finding on each of the
8 30 issues submitted under subsection 5, paragraphs "a",
8 31 "b", and "c", the court shall enter a judgment of
8 32 conviction and shall sentence the defendant to death
8 33 as provided in section 902.1, subsection 2.

8 34 10. However, if evidence that the defendant was
8 35 not a major participant in the commission of the
8 36 murder and that the defendant's conduct did not
8 37 manifest a reckless indifference to human life is
8 38 presented to the jury, or the court, if there is no
8 39 jury, the jury or the court shall also return a
8 40 special verdict on the issue. If the jury unanimously
8 41 determines, or the court, if there is no jury, finds
8 42 that a preponderance of evidence exists that shows
8 43 that the defendant was not a major participant in the
8 44 commission of the murder and that the defendant's
8 45 conduct did not manifest a reckless indifference to
8 46 human life, the court shall enter a judgment of
8 47 conviction and shall sentence the defendant to life
8 48 imprisonment as provided in section 902.1, subsection

8 49 1, even if the jury or the court returns unanimous
8 50 affirmative findings on each of the issues submitted
9 1 under subsection 5.

9 2 11. If the jury, or the court, if there is no
9 3 jury, returns a negative finding on any of the issues
9 4 submitted under subsection 5, paragraphs "a", "b", and
9 5 "c", the court shall enter a judgment of conviction
9 6 and shall sentence the defendant to life imprisonment
9 7 as provided in section 902.1, subsection 1.

9 8 12. After a verdict has been rendered it shall be
9 9 recorded on the jury verdict form and shall be read
9 10 and recorded in open court. The jurors shall be
9 11 collectively asked by the court whether the verdict
9 12 returned is their true and correct verdict. Even
9 13 though no juror makes any declaration to the contrary,
9 14 the jury shall, if either party so requests, be polled
9 15 and each juror shall be separately asked whether the
9 16 verdict rendered by the jury foreperson is the juror's
9 17 true and correct verdict. If, upon either the
9 18 collective or the separate inquiry, any juror denies
9 19 that the verdict is the juror's verdict, the court
9 20 shall refuse to accept the verdict. The court may
9 21 direct inquiry or permit inquiry by counsel to
9 22 ascertain whether any juror has been subjected to
9 23 coercion or has become confused during the jury
9 24 deliberation process. The court may, as appropriate,
9 25 direct the jury to resume deliberation in the case.
9 26 If no disagreement on the verdict is expressed by any
9 27 of the jurors, the court shall discharge the jury.

9 28 13. This section shall not apply to a defendant
9 29 who was under the age of eighteen at the time the
9 30 offense was committed.

9 31 Sec. _____. Section 902.1, Code 2005, is amended to
9 32 read as follows:

9 33 902.1 CLASS "A" FELONY.

9 34 1. Upon Except as otherwise provided in subsection

9 35 2, upon a plea of guilty, a verdict of guilty, or a
9 36 special verdict upon which a judgment of conviction of
9 37 a class "A" felony may be rendered, the court shall
9 38 enter a judgment of conviction and shall commit the
9 39 defendant into the custody of the director of the Iowa
9 40 department of corrections for the rest of the
9 41 defendant's life. Nothing in the Iowa corrections
9 42 code pertaining to deferred judgment, deferred
9 43 sentence, suspended sentence, or reconsideration of
9 44 sentence applies to a sentence of life imprisonment
9 45 for a class "A" felony, and a person convicted of a
9 46 class "A" felony and sentenced to life imprisonment
9 47 shall not be released on parole unless the governor
9 48 commutes the sentence to a term of years.

9 49 2. Upon return of a plea or verdict of guilty to
9 50 the offense of murder in the first degree under
10 1 section 707.2 and a return of a verdict in favor of a
10 2 sentence of death in a penalty proceeding conducted as
10 3 provided in section 901.11, the court shall enter a
10 4 judgment of conviction and shall commit the defendant
10 5 into the custody of the director of the Iowa
10 6 department of corrections. The sentence shall be
10 7 carried out by the administration of a lethal
10 8 injection pursuant to rules adopted by the board of
10 9 corrections. If a defendant, for whom a warrant of
10 10 execution is issued, is pregnant, the execution shall
10 11 not take place until after the defendant is no longer
10 12 pregnant. If a defendant, for whom a warrant of
10 13 execution is issued, is suffering from such a diseased
10 14 or deranged condition of the mind as to prevent the
10 15 defendant from knowing the nature and quality of the
10 16 act the defendant has been convicted of, or from
10 17 understanding that trial on the offense has taken
10 18 place and that execution proceedings are about to take
10 19 place, or otherwise causes the defendant to lack the
10 20 capacity to understand the sentence which has been
10 21 imposed and to participate in any legal proceedings
10 22 relating to the sentence, the execution shall not take
10 23 place until after the defendant's capacity is
10 24 restored. If the director of the department of
10 25 corrections or the defendant's counsel files a request
10 26 with the court which issued the warrant of execution,
10 27 alleging that the defendant suffers from such a
10 28 diseased or deranged condition, a hearing on the
10 29 matter shall be held in the manner provided in section

10 30 812A.1. If a defendant was under the age of eighteen
10 31 at the time the offense was committed, the defendant
10 32 shall be sentenced as provided in subsection 1. For
10 33 the purposes of this section, "lethal injection" means
10 34 a continuous intravenous injection of a lethal
10 35 substance sufficient to cause death.

10 36 Sec. ____ NEW SECTION. 902.15 FIRST DEGREE
10 37 MURDER == ADDITIONAL FACTORS.

10 38 A person who commits murder in the first degree,
10 39 who is not mentally retarded or mentally ill, and who
10 40 is age eighteen or older at the time the offense is
10 41 committed, shall be eligible for a sentence of death
10 42 under section 902.1, subsection 2, if the person also
10 43 kidnaps and commits sexual abuse against a victim who
10 44 was a minor.

10 45 For purposes of this section, "mentally retarded"
10 46 means significant subaverage general intellectual
10 47 functioning accompanied by significant deficits or
10 48 impairments in adaptive functioning manifested in the
10 49 developmental period, but no later than the age of
10 50 eighteen years, and accompanied by deficits in
11 1 adaptive behavior.

11 2 For purposes of this section, "mentally ill" means
11 3 the condition of a person who is suffering from a
11 4 chronic and persistent serious mental disease or
11 5 disorder and who, by reason of that condition, lacks
11 6 sufficient judgment to make responsible decisions
11 7 regarding treatment and is reasonably likely to injure
11 8 the person's self or others who may come into contact
11 9 with the person if the person is allowed to remain at
11 10 liberty without treatment.

11 11 Sec. ____ NEW SECTION. 902.16 DATA COLLECTION
11 12 FOR DEATH PENALTY.

11 13 1. The supreme court shall collect data on all
11 14 murder charges in which the death penalty is or was
11 15 not waived, which are filed and processed in the
11 16 courts in this state. This data may be used by the
11 17 supreme court to determine whether death sentences
11 18 imposed are excessive or disproportionate, or under
11 19 the influence of prejudice as a result of racial
11 20 discrimination under section 814.28. The court shall
11 21 make this data available to litigants in death penalty
11 22 cases.

11 23 2. Data collected by public officials concerning
11 24 factors relevant to the imposition of the death
11 25 sentence shall be made publicly available.

11 26 Sec. ____ NEW SECTION. 903C.1 EXECUTIONS ==
11 27 REFUSAL TO PERFORM.

11 28 An employee of the state who may lawfully perform,
11 29 assist, or participate in the execution of a person
11 30 pursuant to section 902.1, and rules adopted by the
11 31 department of corrections, shall not be required to
11 32 perform, assist, or participate in the execution.
11 33 State employees who refuse to perform, assist, or
11 34 participate in the execution of a person shall not be
11 35 discriminated against in any way, including, but not
11 36 limited to, employment, promotion, advancement,
11 37 transfer, licensing, education, training, or the
11 38 granting of any privileges or appointments because of
11 39 the refusal to perform, assist, or participate in the
11 40 execution.

11 41 Sec. ____ Section 904.105, Code 2005, is amended
11 42 by adding the following new subsection:

11 43 NEW SUBSECTION. 9A. Adopt rules pursuant to
11 44 chapter 17A pertaining to executions of persons
11 45 convicted of murder in the first degree. Rules
11 46 adopted shall include, but are not limited to, rules
11 47 permitting the witnessing of executions by members of
11 48 the public and the victim's family. Invitations to
11 49 witness an execution shall at least be extended to the
11 50 following representatives of the news media:

12 1 a. A representative from a wire service serving
12 2 Iowa.

12 3 b. A representative from a broadcasting network
12 4 serving Iowa.

12 5 c. A representative from a television station
12 6 located in Iowa.

12 7 d. A representative from a radio station located
12 8 in Iowa.

12 9 e. A representative from a daily newspaper
12 10 published in Iowa.

12 11 f. A representative from a weekly newspaper
12 12 published in Iowa.

12 13 g. A representative from the news media from the
12 14 community in which the condemned person resided, if
12 15 that community is located in Iowa.

12 16 Sec. _____. Rules of criminal procedure, Iowa court
12 17 rules, are amended by adding sections 101 through 104
12 18 of this Act.

12 19 Sec. 101. NEW RULE. 2. MURDER IN THE FIRST
12 20 DEGREE == PROCEDURE.

12 21 2.____(1) If a notice of intent to seek the death
12 22 penalty has been filed, objections to the imposition
12 23 of the death penalty based upon allegations that a
12 24 defendant was mentally retarded at the time of the
12 25 commission of the offense shall be raised within the
12 26 time provided for the filing of pretrial motions under
12 27 R.Cr.P. 2.11, Iowa court rules. The court may, for
12 28 good cause shown, allow late filing of the motion.
12 29 Hearing on the motion shall be held prior to trial and
12 30 the burden of proof shall be on the defendant to prove
12 31 mental retardation by a preponderance of the evidence.
12 32 However, a rebuttable presumption of mental
12 33 retardation arises if a defendant has an intelligence
12 34 quotient of seventy or below. A finding of the court
12 35 that the evidence presented by the defendant at the
12 36 hearing does not preclude the imposition of the death
12 37 penalty under this rule and Iowa Code section 902.15
12 38 shall not preclude the introduction of evidence of
12 39 mental retardation during the penalty proceeding. If
12 40 the court finds that the evidence presented by the
12 41 defendant does not preclude the imposition of the
12 42 death penalty, evidence of mental retardation may be
12 43 reviewed by the jury during the penalty proceeding and
12 44 the jury shall not be informed of the finding in the
12 45 initial proceeding at any time during the penalty
12 46 proceeding.

12 47 2.____(2) Upon a finding or plea that a defendant
12 48 is guilty of murder in the first degree in an initial
12 49 proceeding, if a notice of intent to seek the death
12 50 penalty has been filed and has not been waived, the
13 1 court shall conduct a separate penalty proceeding to
13 2 determine whether the defendant shall be sentenced to
13 3 death or to life imprisonment. The penalty proceeding
13 4 shall be conducted in the trial court before the trial
13 5 jury, or the court, if there is no jury, no sooner
13 6 than twenty-four hours after the return of the verdict
13 7 or plea in the initial proceeding. In the penalty
13 8 proceeding, additional evidence may be presented as to
13 9 any factor enumerated in Iowa Code section 902.15 or
13 10 any aggravating or mitigating circumstance which may
13 11 exist. Evidence presented which is relevant to the
13 12 existence of a factor enumerated in Iowa Code section
13 13 902.15 shall be subject to the rules of evidence.
13 14 Presentation of evidence which is relevant to the
13 15 existence of an aggravating or mitigating circumstance
13 16 shall not be bound by the rules of evidence. This
13 17 subsection does not authorize the introduction of any
13 18 evidence secured in violation of the Constitution of
13 19 the United States or of the Constitution of the State
13 20 of Iowa. The state and the defendant or the
13 21 defendant's counsel shall be permitted to cross=
13 22 examine witnesses and to present arguments for or
13 23 against a sentence of death.

13 24 2.____(3) On conclusion of the presentation of the
13 25 evidence in the penalty proceeding, the state and the
13 26 defendant or the defendant's counsel shall be
13 27 permitted to make closing arguments, including any
13 28 rebuttal arguments, in the same manner as in the
13 29 initial proceeding and the court shall submit each of
13 30 the following issues to the jury:

13 31 a. Whether one or more of the factors enumerated
13 32 in Iowa Code section 902.15 have been established
13 33 beyond a reasonable doubt.

13 34 b. If one or more aggravating circumstances have
13 35 been established, whether one or more of those
13 36 circumstances outweigh any one or more mitigating
13 37 circumstances.

13 38 c. Whether the defendant shall be sentenced to
13 39 death.

13 40 If the case is not tried to a jury, the court shall
13 41 determine the issues.

13 42 2.____(4) The state must prove the issue in rule 2.
13 43 ____ (3)(a) beyond a reasonable doubt, and the jury, or
13 44 the court if there is no jury, shall return a special
13 45 verdict of "yes" or "no" on each issue.
13 46 2.____(5) If the case is tried to a jury, the court
13 47 shall charge the jury that:
13 48 a. It shall answer any issue "yes" if it agrees
13 49 unanimously.
13 50 b. It shall answer any issue "no" if the jurors
14 1 unanimously agree that the answer is "no" or if the
14 2 jurors do not unanimously agree that the answer is
14 3 "yes".
14 4 2.____(6) Concurrently with the return of the
14 5 special verdicts under rule 2.____(4), the jury, or the
14 6 court if there is no jury, shall also return special
14 7 verdicts as follows:
14 8 a. Which of the factor, or factors, enumerated in
14 9 Iowa Code section 902.15, has been unanimously found
14 10 to have been established beyond a reasonable doubt.
14 11 b. Which aggravating circumstances were
14 12 established and were considered in reaching the
14 13 verdict returned on the issue specified in rule
14 14 2.____(3)(b).
14 15 c. Which mitigating circumstances were established
14 16 and were considered in reaching the verdict returned
14 17 on the issue specified in rule 2.____(3)(b).
14 18 2.____(7) If the jury, or the court, if there is no
14 19 jury, returns an affirmative finding on all applicable
14 20 issues, the court shall sentence the defendant to
14 21 death. If the jury or the court returns a negative
14 22 finding on any applicable issue, the court shall
14 23 sentence the defendant to the custody of the director
14 24 of the department of corrections for confinement for
14 25 the rest of the defendant's life.
14 26 2.____(8) After a verdict has been rendered it
14 27 shall be recorded on the jury verdict form and shall
14 28 be read and recorded in open court. The jurors shall
14 29 be collectively asked by the court whether the verdict
14 30 returned is their true and correct verdict. Even
14 31 though no juror makes any declaration to the contrary,
14 32 the jury shall, if either party so requests, be polled
14 33 and each juror shall be separately asked whether the
14 34 verdict rendered by the jury foreperson is the juror's
14 35 true and correct verdict. If, upon either the
14 36 collective or the separate inquiry, any juror denies
14 37 that the verdict is the juror's verdict, the court
14 38 shall refuse to accept the verdict. The court may
14 39 direct inquiry or permit inquiry by counsel to
14 40 ascertain whether any juror has been subjected to
14 41 coercion or has become confused during the jury
14 42 deliberation process. The court may, as appropriate,
14 43 direct the jury to resume deliberation in the case.
14 44 If no disagreement on the verdict is expressed by any
14 45 of the jurors, the court shall discharge the jury.
14 46 2.____(9) Provisions relating to deferred judgment,
14 47 deferred sentence, suspended sentence, reconsideration
14 48 of sentence, probation, parole, or work release
14 49 contained in Iowa Code chapters 901 through 909 do not
14 50 apply to a conviction of murder in the first degree if
15 1 the defendant is sentenced to death.
15 2 Sec. 102. NEW RULE. 2.____ AUTOMATIC REVIEW ==
15 3 STAY OF EXECUTION OF JUDGMENT.
15 4 2.____(1) A judgment of conviction and sentence of
15 5 death shall be reviewed automatically in the manner
15 6 provided in Iowa Code section 814.28, and the Iowa
15 7 supreme court has exclusive jurisdiction of the
15 8 review.
15 9 2.____(2) Upon entry of judgment and sentence of
15 10 death, the trial court shall prepare a complete record
15 11 and transcript of the action in the manner provided in
15 12 the rules of criminal procedure and shall docket the
15 13 record and transcript with the clerk of the supreme
15 14 court.
15 15 2.____(3) The execution of judgment of the trial
15 16 court is stayed as a matter of law from the time of
15 17 its entry until the judgment of the supreme court is
15 18 certified to and entered by the trial court. Upon
15 19 entry of a judgment of the supreme court which affirms
15 20 the conviction and sentence, the stay of execution of
15 21 judgment terminates as a matter of law.
15 22 2. (4) All court costs required due to the

15 23 automatic preparation of the record and transcript,
15 24 docketing with the supreme court, and stay of
15 25 execution of judgment shall be assessed to the state.
15 26 Sec. 103. NEW RULE. 2.____ ISSUANCE OF WARRANT.
15 27 2.____(1) Upon entry by the trial court of the
15 28 judgment of the supreme court affirming a judgment and
15 29 sentence of death, a district judge shall within five
15 30 days of the entry issue a warrant under the seal of
15 31 the court for the execution of the sentence of death.
15 32 The warrant shall specifically set forth the offense
15 33 and the fact of conviction, shall state the judgment
15 34 and sentence of the court, shall state that the
15 35 judgment and sentence were affirmed by the supreme
15 36 court and the date of entry of judgment of the supreme
15 37 court in the trial court, and shall, subject to the
15 38 requirements of Iowa Code section 902.1, subsection 2,
15 39 specify a range of five days for execution of the
15 40 defendant which shall be not less than fifty nor more
15 41 than sixty days after the date of entry in the trial
15 42 court of the judgment of the supreme court affirming
15 43 the judgment and sentence of death. The warrant shall
15 44 be directed to the director of the department of
15 45 corrections commanding the director to cause the
15 46 warrant to be executed within the dates specified.
15 47 The trial court shall deliver the warrant to the
15 48 sheriff of the county in which judgment of conviction
15 49 was entered and the sheriff shall deliver the warrant
15 50 to the director of the department of corrections. The
16 1 director of the department of corrections shall
16 2 acknowledge receipt of the warrant and the defendant,
16 3 and the sheriff shall return the acknowledgment to the
16 4 office of the clerk of the trial court from which the
16 5 warrant was issued.
16 6 2.____(2) Immediately after issuance of a warrant
16 7 ordering a sentence of death, the clerk of the trial
16 8 court issuing the warrant shall transmit by certified
16 9 mail to the governor a copy of the indictment, the
16 10 plea, the verdict and special findings, the
16 11 affirmation of judgment and sentence by the supreme
16 12 court, and the complete transcript of the trial court.
16 13 2.____(3) Notwithstanding rule 2.____(1), if a
16 14 defendant, for whom a warrant of execution is issued,
16 15 is pregnant, the execution shall not take place until
16 16 after the defendant is no longer pregnant.
16 17 Notwithstanding rule 2.____(1), if a defendant, for
16 18 whom a warrant of execution is issued, is suffering
16 19 from such a diseased or deranged condition of the mind
16 20 as to prevent the defendant from knowing the nature
16 21 and quality of the act the defendant has been
16 22 convicted of, or from understanding that trial on the
16 23 offense has taken place and that execution proceedings
16 24 are about to take place, or to otherwise cause the
16 25 defendant to lack the capacity to understand the
16 26 sentence which has been imposed and to participate in
16 27 any legal proceedings relating to the sentence, the
16 28 execution shall not take place until after the
16 29 defendant is no longer suffering from the condition.
16 30 Sec. 104. NEW RULE. 2.____ EVIDENCE AT PENALTY
16 31 PROCEEDING WHERE DEATH SENTENCE REQUESTED.
16 32 2.____(1) At a reasonable time before the
16 33 commencement of initial proceedings in a first degree
16 34 murder trial in which a sentence of death has been
16 35 requested, each party shall file and serve upon the
16 36 other party the following:
16 37 a. A list of all aggravating or mitigating
16 38 circumstances which the party intends to prove during
16 39 the sentencing proceedings.
16 40 b. The names of all persons whom the party intends
16 41 to call as witnesses during the sentencing
16 42 proceedings.
16 43 c. Notwithstanding rule 2.14, copies, or for
16 44 inspection purposes, the location, of all documents,
16 45 including books, papers, writings, drawings, graphs,
16 46 charts, photographs, telephone records, and other data
16 47 compilations from which information can be obtained,
16 48 or other objects which the party intends to offer into
16 49 evidence during the sentencing proceedings. If copies
16 50 are not supplied to opposing counsel, the party shall
17 1 make the items available for inspection and copying
17 2 without order of the court.
17 3 2. (2) In proceedings to determine whether the

17 4 sentence shall be death or life imprisonment, evidence
17 5 may be presented as to any matter which the trial
17 6 court deems relevant to the sentence, including but
17 7 not limited to the nature, circumstances, and manner
17 8 of completion of the murder, and the defendant's
17 9 character, background, history, and mental and
17 10 physical condition. The trial court shall admit any
17 11 relevant admissible evidence respecting any
17 12 aggravating or mitigating circumstances, if the party
17 13 has included the circumstance on a list provided
17 14 pursuant to this rule, or good cause is shown for the
17 15 failure to do so.

17 16 Sec. _____. EFFECTIVE DATE == SEVERABILITY.

17 17 1. This division of this Act takes effect January
17 18 1, 2006, and applies to offenses committed on or after
17 19 that date.

17 20 2. If any provision of this division of this Act
17 21 or the application thereof to any person is invalid,
17 22 the invalidity shall not affect the provisions or
17 23 application of this division of this Act which can be
17 24 given effect without the invalid provisions or
17 25 application and to this end, the provisions of this
17 26 division of this Act are severable.>

17 27 #3. Title page, by striking lines 1 through 3 and
17 28 inserting the following: <An Act relating to criminal
17 29 practices and procedures, by applying the death
17 30 penalty for certain class "A" felons, by relating to
17 31 persons convicted of criminal offenses requiring
17 32 registration on the sex offender registry or requiring
17 33 an additional indeterminate sentence, by establishing
17 34 a>.

17 35 #4. Title page, line 5, by inserting after the
17 36 word <penalties> the following: <, and providing an
17 37 effective date and for the Act's applicability>.

17 38 #5. By renumbering as necessary.

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17 42 LARRY MCKIBBEN

17 43

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17 46 JEFF LAMBERTI

17 47

17 48

17 49

17 50 JERRY BEHN

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18 4 JEFF ANGELO

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18 8 JAMES SEYMOUR

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18 12 PAUL MCKINLEY

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18 16 JOHN PUTNEY

18 17

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18 20 NANCY BOETTGER

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18 24 RON WIECK

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18 28 CHARLES W. LARSON, JR.

18 29

18 30

18 31

18 32 PAT WARD

18 33

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18 35 _____
18 36 BOB BRUNKHORST
18 37
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18 39 _____
18 40 STEVE KETTERING
18 41
18 42
18 43 _____
18 44 JAMES HAHN
18 45
18 46
18 47 _____
18 48 HUBERT M. HOUSER
18 49
18 50
19 1 _____
19 2 STEWART IVERSON, Jr.
19 3 HF 619.708 81
19 4 jm/gg/2926